

Resolution Opposing Regulation through Litigation

WHEREAS, Congress and the Administration are reducing overregulation that hampers economic growth, deters innovation, and places unnecessary burdens on individuals and businesses.

WHEREAS, past experience shows that when some judges perceive that federal regulation is limited or reduced, those judges become more willing to adopt novel tort law theories to make up for perceived regulatory shortcomings.

WHEREAS, such regulation through litigation is unwise public policy. As a unanimous U.S. Supreme Court has recognized, individual judges lack the scientific, economic, and technological resources of legislators and regulators, cannot invite input by any interested person or seek the counsel of state regulators, and are confined in their decision making by a record comprised of evidence presented by the parties before it.^[1]

WHEREAS, legislatures and duly-authorized administrative agencies are best equipped to engage in a broad cost-benefit analysis of regulations.

THEREFORE, BE IT RESOLVED that the American Legislative Exchange Council urges courts not to respond to federal regulatory reform by expanding tort law doctrines beyond their traditional lines.

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^[1] *Am. Elec. Power Co. v. Connecticut*, 564 U.S. 410, 428 (2011).